In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 341

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND GENERAL ELECTRIC COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

Upon charges filed by petitioner, the General Counsel of the National Labor Relations Board issued a complaint charging the General Electric Company with various unfair labor practices. After a hearing, the Trial Examiner found that, on the "totality of the [Company's] conduct at and away from the bargaining table, without, however, giving conclusive weight to any separate element," the Company had refused to bargain collectively in good faith, in violation of Section 8(a)(5) and (1) of the National Labor Relations

Act. 150 N.L.R.B. 192, 283. The Examiner further found that the strike which followed the Company's refusal to bargain "was caused and prolonged in substantial part" by that refusal and that, consequently, the Company violated Section 8(a)(3) and (1) of the Act by denying reinstatement to twenty of the employees who had been on strike. The Examiner recommended, however, that the complaint be dismissed insofar as it alleged that the Company had violated Section 8(a)(1) by threatening to discharge four of the strikers.[1] *Id.*, at 284.

The Company, the General Counsel, and the Union filed exceptions to the Examiner's decision.[2] The Gen-

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[1] This allegation was based on a letter which the Company sent the four strikers on October 5, 1960, "stating that if they did not return to work by the start of their regular shift, Monday, October 10, their employment with GE would be terminated and replacements would be hired" (150 N.L.R.B. at 255). The Trial Examiner found that Board precedents appeared to support the General Counsel's claim that "the particular phrasing of the letter was such as to be coercive within the meaning of Section 8(a)(1)." However, he noted that the Company had "corrected the letter promptly after its attention was called to the illegal phrasing, and before any action was taken against the employees." He concluded that, because of "such mitigating circumstances and also bearing in mind that the coercion inherent in the original letter could have been the result of inartfully chosen language rather than deliberate design, and that this was the only instance of its kind in some 115 IUE bargaining units covering some 70,000 employees," the violation alleged was not "such as to call for a separate unfair labor practice finding and remedial order based thereon" (150 N.L.R.B. at 284).

[2] The exceptions of the General Counsel and the Union are set forth in an appendix to the Union's petition for rehearing in the court below, which is on file with the Clerk of this Court (see Pet. 5, n. 1).

eral Counsel excepted to the Examiner's failure to find that certain of the Company's actions independently violated Section 8(a)(5) and (1), to his failure to find that the October 5 letter (n. 1, *supra*) violated Section 8(a)(1), and to his failure to recommend a broad Section 8(a)(1) cease-and-desist order. The Union joined in the General Counsel's exceptions and added the objection that the Examiner's order was not sufficiently specific.

The Board adopted the Trial Examiner's decision and recommended order, without modification. 150 N.L.R.B. 192. The Company, pursuant to Section 10(f) of the Act, petitioned the court of appeals to review the Board's decision and order, and the Board, pursuant to Section 10(e), filed a petition to enforce its order. The Union moved to intervene in the Company's review proceeding. It also filed its own petition to review, contending that it was aggrieved by the fact that the Board had "failed to find certain violations of the Act, and declined to order certain relief as requested by Petitioner." [3]

Prior to this Court's decision in *Automobile Workers* v. *Scofield*, 382 U.S. 205, the court below dismissed the Union's petition to review and denied the Union leave to intervene in the proceedings brought by the Company and the Board, which had been consolidated. On the Union's petition for certiorari, this Court reversed these rulings and remanded the case to the court below for reconsideration in the light of *Scofield*.

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[3] The Union's petition to review is set forth at pp. 1a-2a of the appendix to its petition for rehearing in the court below.

International Union of Electrical Workers v. *National Labor Relations Board*, 382 U.S. 366. The court of appeals reversed its previous ruling and granted the Union leave to intervene in the proceedings brought by the Company and the Board. However, the court denied the Union's motion to defer consideration of the Company's motion to dismiss its review petition [4] and, adhering to its original ruling on this point, dismissed the Union's petition (Pet. App. 2a-3a). In so doing, the court indicated that "the Union will not be adversely affected by a dismissal of [its review petition] because it will be permitted as intervenor to raise all relevant issues upon review of the other two cases" (Pet. App. 3a). The Union then filed a petition for rehearing or for rehearing *en banc*,[5] which was denied (Pet. 2).

The sole question presented is whether the charging party before the Board is a "person aggrieved," with-

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[4] In its motion, the Union stated that (Motion, p. 4):

> While the Board did not in the instant case dismiss any portion of the complaint, the Board did fail to make certain findings supported by substantial evidence which were within the issues covered by the complaint and did fail to issue relief requested by the Union. The Union filed exceptions to the Intermediate Report listing the deficiencies in findings and relief and filed a brief supporting its exceptions.

[5] In its petition for rehearing, the Union again claimed that it was aggrieved, not because the Board had dismissed a portion of the complaint, but because it had failed to make "the findings of fact and order" requested by it (Pet. for Rehearing, p. 4).

in the meaning of Section 10(f) of the Act,[6] where, although the Board sustained the major allegations of the complaint, it dismissed one of the complaint's allegations, failed to make certain findings and failed to provide the form of remedy requested by the charging party. We agree with petitioner that, in these circumstances, the charging party is a "person aggrieved" under the Act. Clearly the charging party in this case has been denied "in part the relief sought" (Section 10(f), *infra*, n. 6).

The court of appeals' error in dismissing the Union's petition to review, however, does not appear to us to be prejudicial or sufficiently significant to warrant review by this Court. The court indicated that its decision would not adversely affect the Union "because it will be permitted as intervenor to raise all relevant issues upon review of the other two cases" (Pet. App. 3a). In view of this assurance, there is no reason to believe that the court below will not permit the Union to raise all its objections to the Board's decision and order.[7] Accordingly, we suggest that re-

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[6] Section 10(f) provides that: "Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order" in the appropriate court of appeals.

[7] The only possible exception is the Union's contention that the Board erred in dismissing the portion of the complaint alleging that the October 5 letter to the strikers (n. 1, *supra*) constituted an independent violation of Section 8(a)(1) of the Act. However, this is such a minor aspect of the case that the Union did not even refer to it in its motions in the court below (see nn. 4 and 5, *supra*); it claimed that it was aggrieved only insofar as the Board had failed to make certain additional findings and to provide a more detailed order.

view by this Court, at least at the present time, would be unnecessary. Should the Court grant the petition, however, the Board will support the Union's position that its petition to review should not have been dismissed.

Respectfully submitted.

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